Thoughtful = facts + + +

THOUGHTFUL FACTS,

AND

INTERESTING REMARKS,

PROVING

The American Popular Life Insurance Company Solvent,

AND

DR. LAMBERT "NOT GUILTY."

Robert R. McElwaine, M.D.
60 West 38th St.

"Offers to Show" the American Popular Solvent.

Extract. Court of Oyer and Terminer, New York, Dec. 10, 1878.

Q. (*Hon. Wm. Barnes.*)—Were the valuations of the policies of the American Popular made at the actual age of the policyholders? *A.* (*Mr. McCall.*)—Yes, sir.

Q. Did the Department debit the Company with the net value of the policy at the actual, instead of at the graded ages? *A.* Yes, sir.

[That is to say, if the Company graded a person of 35 at 20, so that he would not pay any reserve, the policy was charged by the Department with just the same reserve as if the Company had taken a premium of 35, including a reserve.]

Q. You debited this Company precisely to the same extent as if it had charged full standard premiums the same as the Mutual Life of New York? *A.* Yes, sir.

Q. You made the premium reserve include the old policies instead of the premium policies of the register, did you not? *A.* Yes, sir; it was including those policies changed.

[That is, the Department, in cases in which policyholders had changed their policies, either for their own or for the Companies' advantage and thus the State reserve was reduced, took the liberty of making the reserve the same as it was upon the old policies, although no good could justly result to the policyholders, and great harm certainly would if the status of the Company was broken up. The act was, first, without law; second, without any foundation in reason; third, wicked,—because attended by insinuations from the Department that the policyholders had been wronged, and because against the interest of the policyholders.]

Q. Assuming that the rejections were wrongfully made, the result would be that this Company was solvent, would it not? [Objected to as immaterial.]

Q. Assuming that all the business of the Company was

graduated between premiums and risks, the same as policy 379, of which we gave the figures the other day, and that the gross premium actually received by this Company, was only enough to carry the Term risk, I ask you whether it is equitable that the Company should be charged with a policy reserve? *A.* [Objected to, yet answered.]—No, sir.

Q. That is, whether the total of the assets of this Company would not be a surplus or the property of the stockholders, instead of being that of the policy-holders, they never having paid for these? [Objected to.]

Mr. Barnes.—We offer to show that the actual gross premiums received by this Company were only sufficient to carry the current yearly risks of the Company. [Objection.]

Mr. Barnes.—We offer to show by an understanding between the stockholders and policyholders of this Company (to wit, the policy), that the policyholders were only to pay enough to carry their current risks. [Objection.]

Mr. Barnes.—We offer to show by expert testimony, and by this witness, that by the correct valuation of policies in cases where the premiums are according to the policy register, no liability could be properly charged against the Company excepting $50,000. [Objection.]

[If the Company was solvent, which the witness, McCall, was reluctantly compelled to allow, and, for iniquitous purposes, was thrown into the hands of a Receiver as insolvent, the attack upon it was an outrage, and with the continued assaults upon it and upon its officials has been one of the foulest blots upon the conduct of public affairs that has ever dishonored this State.]

Proving Company Solvent, Dr. Lambert "not Guilty."

The "objections" to the Hon. Wm. Barnes' "offer to show" above noted, of course indicate substantially that proof of the Company's solvency was imminent and vindicating Dr. Lambert.

As he was not allowed to demonstrate his actuarial, legal proofs of his allegation that the Company was solvent when it was raided, a few FACTS may be here adduced which will be another form of proof—moral proof, and perhaps more generally convincing ; forceful in deductions, they are coincident with but one theory, to wit, that Dr. Lambert worked honestly and faithfully for nearly eleven years, at merely living compensation, in the service of the stockholders and policyholders; that he misrepresented nothing, but told the truth so plainly that it did not suit those who wish to make life insurance business expensive ; and that the Company was solvent when raided.

FACT 1.—In 1868 the following was published in a work explanatory of the Company:

"This Company was organized in 1866 to present not merely new features, but new principles and methods, not invented for novelty nor for the emolument of individuals, but for the correct working out of Life Insurance."

The object of the officials was not to make life insurance cheap; they were obliged to "make a virtue of a necessity;" their business was primarily to measure correctly each risk ; its smallness in best grades made economy essential, and prohibited temptation to embezzlement and extravagance,—the natural offspring of large "reserves." Small premiums and attendant economy were then the necessary results of applied science, not a growth from moral feelings, nor from a benevolent longing to promote the welfare of man, and to strike down those who are robbing the insured through the device of "reserves," not to reform the business socially nor morally ; but the object was to apply and test the science of Biometry, and the resulting low premiums to best grades, and the economy, were necessary incidents. The Company was pure stock, transacting business for profits, and being most decidedly coincident with the interests of the best grade risks, while all the other companies were as decidedly adverse to their interests, it pleased those in whom life insurance profits do most indwell. Ought they not to have one company in their favor ?

FACT 2.—It proposed; (*a*) to grade applicants according to their risk; (*b*) to insure them without their paying "reserve;" (*c*) to rebate premiums of those yearly examined; (*d*) to be economical.

Remark. The above two facts show that the public has been misled into confounding this Company with others, the wrong doing of which had become conspicuous, and which this Company was adapted to outroot.

FACT 3.—Its deaths among all grades were not half as numerous in proportion as those of other Companies.

Remark. It has been enviously asserted (showing where the shoe pinched), that this was caused by reporting policies not taken, which error is outcast by the facts, 4 to 8 inclusive.

It is also said that the deaths among the "not taken policies" are not known nor ratioed; but corresponding to deaths in first year insurance, the ratio would be microscopic. It is falsely said that "numerous claims contested were not counted." Only one in seven was contested per average; the year the ratio was least every claim was honest and paid. The claims contested *were* counted, as the State Reports will prove; that nails that ——. If the number of "not taken policies" had been twice that which was stated, and the deaths among them twice as numerous as in the old policies, and all counted, the ratio in best grades would not *then* have been one-fourth, nor in all grades together one-half, what they were in other companies. (See *Remark* on fact 8.) That shoe must therefore continue to pinch. It is of no use to try to evade the truth, there is a great difference in the *vitality* and *longevity*, the VIABILITY of different men, and it is easily determined.

FACT 4.—Among the rebated risks (the very best) there was not one death in ten years. (This was never advertised, it was too good.)

FACT 5.—Among the insured examined personally by Dr. Morris (Surg.-in-Chief), there was not one death, by Dr. Roof but one, by Dr. Thompson not one, by Dr. Graves not one, by Dr. Lambert (10 years) but two. These were the salaried experts of the Company, the first four employed from two to five years.

FACT 6.—But two deaths occurred among those insured within the last four years.

Remark. The last three facts show how correct and easily applicable the principles, the science and art of Biometry are.

A recent article upon Dr. Lambert, written for the Prattsburgh *News*, by Dr. Nelson Sizer, of this city, is to the point, and as his

intelligence, years, and peculiar experience, being also disinterested, make him the very best authority, the opinion of Prof. Sizer as found in the following extract, should have much weight:

"Of one fact I have no doubt, viz: that the other companies have a strong and special interest to break down the Dr.'s company, and silence him, because he was the founder, or at least the persistent promoter of a new method of taking risks on lives.

Other companies insure everybody who can pass a medical examination, at a given rate, which is based on certain general averages. Some of the men so accepted have constitutions which will carry them from thirty to fifty years of age—others, surrounded by the same influences, will reach eighty. Now it is evident that the one who has only twenty years more of life in his constitution should pay four times as much premium on a thousand dollars of insurance as the man who is to live fifty years.

Doctor Lambert professed to be able to tell who among a hundred men had such constitutions, had a reasonable prospect of reaching eighty years, and who with equal health at thirty would not be likely to go beyond fifty. This he doubtless could do, and consequently he made low figures for those who had a prospect of long life, and charged those men more whose prospect of life was much less, and these would of course go to other companies. The result was, the best patrons of other companies began to complain of the high rates charged as contrasted with the low rates charged to them by the American Popular and a strong desire must have existed to crush the Popular lest it become *too* popular; and in these times of sharp business practices, it would be very easy to surppose a conspiracy to convict Dr. Lambert might be formed.

In this matter of estimating a person's probable length of life, and therefore what it ought to cost to insure him, Dr. Lambert is right, and the principle set forth by him ought to be respected and and put in practice. The extra-good risks, pay too much."

FACT 7.—The State Reports show that in no one year did this Company receive half as much premium money for the same assurance as any other Company did; not one-third the average, and in the last four years not one-fourth.

Remark. It is said that small premiums induced its condition Not so; see Facts 4 and 12, and remarks. Much smaller could have been made to best grades, and would have been another year. That was one cause of the *animus* of this attack of the companies whose only competition was to get this one out of the way, and then say to complainers, "See what small premiums do; the officials of the American Popular did not steal a cent, and were very economical, but they did not get enough premiums,—better pay more and be safe."

FACT 8.—The Referee, in his report upon a large class of policies carrying $1,432,950 assurance, states that there were $220,850 as premiums paid upon them. They average eight years.

Remark. The two previous facts, show not only that the premiums were very small, but that the death losses were not half as numerous as in other Companies, or the Company could not have gone on as it did. The $220,850 which the Referee mentions, would not in any other Company half pay the death losses on that assurance for that time. This certainly proves that the Company owes those policies nothing ; they owe the Company (the officials in particular) a debt of gratitude for making their whole cost not half what their *death loss* cost could have been elsewhere. Yet it is actually suggested to the Supreme Court and to those policyholders that they should divide the funds in the Company's treasury, in proportion to their "reserves" computed by the State for its purposes. What right have they to this fund? Did they pay it, or any part of it?

It would certainly be confiscation for the law to be interpreted as saying that the Company owes to policyholders a "reserve" which it never received from them.

Opinions of the most able men and oldest officials.

"*Dear Sir:* * * * A policyholder cannot justly have any right to a "reserve" to which he has not contributed. * * *
Yours truly, OLIVER PILLSBURY, Ins. Com. N. H."

"*Dear Sir:* * * * I entirely concur with Mr. Pillsbury. * * * Yours, &c., HENRY C. KELSEY, Ins. Com. N. J."

"*Dear Sir:* * * * The interest of a policyholder in the "reserve" should be determined by the ratio of his contribution to it. * * * Respectfully yours,
STEPHEN H. RHODES, Ins. Com. Mass."

"*Dear Sir:* * * * A policyholder having paid so small a premium that it includes no "reserve," has no rightful claim to any "reserve." * * * Yours truly,
WM. EWING, Dept. Supt. Ins. Ohio."

Others of the same tenor might be added, but as there is not a single dissent, nor a looking toward one, the point may be assumed as well taken and conclusive. (A sheet of them can be had)

The yearly cost was the criterion of the amount of premiums, except in the case of a few policyholders; there were therefore generally no "reserves" taken, hence none owing to policyholders, and the *funds of the Company*, except, as Mr. Barnes said, $50,000, *belonged to the Company.* A square, easily understood business.

FACT 9.—There were constantly in the office, and at the time of the "injunction," many scores, yes, hundreds of applications for policies, and many policies in agents' hands, which would have been instantly taken at the ordinary or a little lower premium.

Remark. This fully accounts for the large number of "not taken policies." It shows that policies were rated upon principle, and that money was in comparison no object. That *Fact* outcasts all the assertions, taunts, aspersions, and falsehoods against the Company and its officials. Is it possible that these would stand blind and deaf to Entreaty holding out its money, unless a sound principle and integrity ruled their minds? Would either official have refused if he was so corrupt as to commit a crime; if he wished, as a judge said he did, to "dupe or delude people of money?" The FACT and the supposition are too contradictory to bear the contrast for a moment. The thoroughness, promptness, and decision that graded up a case, if at all inferior, forbids the idea that any illegitimate method was used to get policies; if the desire existed, the easy way was at hand,—grade down applicants and rake in the money; that so many were graded up, that the strong pressure of applicants and of agents was not even a temptation, is "proof strong as holy writ," that no temporizing, but that truth, science, and the ulterior good of the Company ruled every thought and act of Dr. Lambert, and should settle in every thoughtful mind the firm and truthful conviction that the accusations made against him have no foundation, but are a great mistake, blunder, or wickedness.

The accusation must have come through "ignorance or falsehood." Those who understand the facts will say through both.

FACT 10.—No officer drew a salary of more than $3,000, nor in any way more than $4,500, and that for only a part of the time.

Remark.—Could these salaries tempt men allowed to be of the highest ability, to commit crime? Could a man thus working to sustain a scientific principle, to serve the public welfare, after an honored life of the strictest integrity, without a blot or accusation, be tempted into a crime without any overbearing object? The idea is preposterous. A legal pen remarks:

"Dr. Lambert has been said by opponents to be a monomaniac on

a mode of life insurance. But do facts show that life insurance *per se* was his idol? It was only an instrument for the illustrating, demonstrating, and developing of Biometry, one of the most profound, and, considered in all its relations, practical sciences, ever brought to the use of man. Dr. Lambert, as his whole course has shown, cared nothing about the monied aspect of the business, only as that was a necessity to this. He put in his money, time, labor, and refused large offers elsewhere with satisfaction, for the love of science, of this one particularly. Shall he for this be maligned, incarcerated, impoverished, and to fill the pockets of interested workers against him? What is still more important, shall the public be deprived of his continued services, his researches, his instructions? Shall such a man be decided to be the only life insurance President who is to be imprisoned, and 68 whose companies have failed, and still worse, those who are yet yearly swindling the public out of millions, be at large? True this is one way to classify the worthy and the unworthy but should it not be *vice versa?*"

FACT. 11.—It has never been charged that a dollar has been misappropriated, embezzled, badly invested, or wrongly used.

Remark. The "Receiver" said to a gentleman that he "could find no trace of a dollar stolen;" his lawyer told another that "Dr. Lambert had worked hard for eleven years, and he did not believe he had made a dollar; he looked upon him as a monomaniac about a certain way of life insurance." It would perhaps be well for the world if there were more of that kind.

If these facts are true, and they are unquestionable, how can the company be justly called a failure, or its officials be justly accused of defrauding any one?

Is it possible for the facts under this head (11) alone to be appreciated and the conclusion not reached that the Company must have been solvent; and that the officials, Dr. Lambert especially, could not have been guilty of crime or wrong doing.

FACT 12.—This Company paid every debt; when enjoined it had more undisputable cash assets than would cover claims, just or unjust, and all "reserve" ever received; able with profit, it earnestly wished to fulfill its contracts, and to satisfy it patrons.

Remark.—How then did it wrong any one? It did not. The wrong was done to, not by, the Company, as will be further shown.

How under these *Facts* just stated could the Company be justly called commercially insolvent? It could not be, and it will soon appear that by the conditions of its policies it was not unsound according to State Insurance Law. Indeed, when enjoined, it was practically the soundest in the State, in fact the only one having *per se* a perfect capability of fulfilling its contracts. We will proceed to the further proof of this by *Facts* and *Remarks* bearing upon the State Insurance Law relating to the Company.

FACT 13.—In 1866 eight companies organized; in 1876 only this one of them was active; in 1866–68 there were 103 companies; in 1876, 43, (now 35).

Remark. Rightly read this is a volume; vindicating perfectly the Company and its officials. The 60 collapsed companies took full "reserve" premiums. What right had they to fail? They misspent, or worse, embezzled the "reserve." This one company, none other, in the aggregate took no portion of the "reserve" part of premiums,—in fact not one-half the money, in proportion to assurance made,—that the 60 did, yet was prosperous. For example, if a level premium at 35 is $26.38, the "reserve" is $10.32, and the part applicable to cost that year is $16.06. To wit: while the 60 took $26.38, this one took less than $16.06, or even half that, for its best risks—its chief members. What was its status in 1876, the period of its first Decennium?

It had not spent a dollar of its capital paid in, for the identical capital originally paid in and invested was on hand.

It did not spend a dime of "reserve," for it never had any cash "reserve" to spend.

It did not spend even all the *cost part* of premiums, because, first, it did not receive it all, and second, it had on hand a part of it as surplus, after paying all the current expenses, and those attendant upon establishing business.

Did any other company in the world ever make such a record; ever insure as cheaply as this, the same number of persons, for same amounts, for equal times? Not one. Did any other ever insure persons aged 20 to 60, for $60 yearly, for $10,000 assurance? Not one. Why then was it not the best managed Company in the World? Doubtless it might have been managed

better, but do not the facts show that none ever was? Did the officials of any other Company ever accomplish so much at so little cost? Was not their faithful industry proved by grading risks correctly, and limiting expenses economically?

Then since the Company accomplished what it intended far more perfectly than it promised or expected to do, IT CERTAINLY WAS NO FAILURE. Is it not a shameless-faced shame to condemn this Company in the same manner as one is condemned with its capital gone, the full cost part of its premium gone, and a portion of the "reserve" part gone, which surely it had no business to diminish when once taken, since it was a trust?

Compare one company, fairly representing the 60, and one, the American Popular, making the same number, kind, and amount of policies; starting with the same capital, A receives full cash premiums, viz., all the cost and the "reserve" parts; B receives only half the cost part, and 0 of the "reserve" part. The amounts stated below being received, the State examines each with the results shown.

	Company A.		*Company B.*	
	Cash Rec'd.	On hand when Exam'd.	Cash Rec'd.	On hand when Exam'd
Capital	$ 100,000	0	$100,000	$100,000
Cost part Prem.,	$1,000,000	0	$500,000	$150,000
Reserve part "	$ 300,000	$250.000	0	0
Cash Assets,	$1,400,000	$250,000	$600,000	$250,000

True, the cash asset is the same, $250,000 in each, and B is $50,000 short of $300,000 *cash* "reserve," the same as A, but A took from policyholders $1,300,000, B but $500,000. A expended $1,100,000, B, $350,000. If the insured get what "reserve" there is in A, as they should, they will then be out $1,050,000. If the stock in B should get the $250,000, as it should, the insured will be out but $500,000.

(It is but just to say that some of the 60 took part note or loan premiums, which however in an unsound company could not equal "reserve"; some of them also reinsured their policies; but as the "reserve" covered those, in all cases the *cash* cost to the insured is in comparison correctly represented for all the

60 by, at the least, the $1,000,000 in the example, or more than twice the cost in the American Popular.)

Will any person say that each of these companies should be equally called a failure? Are their officials to be equally criminated? A thousand times no! One deserves the highest eclat.

Yet it may be said that if the State demands a "reserve" which the Company did not have, there was a failure to comply. But—

FACT 14.—THE COMPANY DID HAVE THE LEGAL "RESERVE," (see Mr. Barnes' "offer to show,") *necessarily* had it.

Remark.—Conditions in policies provided, at least in a large proportion of them, that enough of the unpaid premiums might be charged to the policies to make the assets 25 per cent. above the highest "reserve" charged by any State: as also that which was chargeable was the difference between the amount taken and the full premium, and as the Company computes at 7 per cent., against State computation at 4½, the "*gross premiums due*, &c.," would alone always exceed all "reserve" computable by the State.

Example: A full premium, $310 rebated to $60 cash paid, leaves $250, called "*gross premium due*, etc;" in four years $1,000; on 66 policies $66,000, not counting interest.

Apply the above ideas to B. To its cash assets ($250,000,) add (pencilling figures below) "*gross premiums due*, etc," sufficient ($125,000) to make the whole assets 25% ($375,000) surplus above the "reserve" $300,000, or in all $375,000. If any part of the cash assets, $250,000, are unadmitted by any State, or if it computes a higher reserve than $300,000, then to keep the aggregate assets up to the same amount ($375,000) as before, the part called "*gross premiums due*, etc.," must be correspondingly increased; this can be done legitimately, since the policies in themselves, in virtue of the above conditions, carry the assets to more than balance "reserves."

(It is unnecessary for soundness according to State law, that the aggregate assets exceed the "reserve.")

An important point to be remembered is brought out by the above example. Through "ignorance or falsehood" changes of policies by the company have been most abusively denounced; but the above example shows that the older the policy, not only

the larger the "reserve" but still larger will be the charge against it. It was therefore on that account for the advantage of policyholders if the matter touched them at all, to have the policies changed.

☞ MARK WELL HERE ANOTHER POINT, that will convince every thoughtful mind that Dr. Lambert could *not be* guilty as accused, since no official would be tempted to exaggerate *cash* assets, as it would not increase them actually, but it would actually diminish the "*gross premium due*" assets chargeable, and of course would diminish the actual possible resources of the Company. The exaggeration of the cash assets would make no more show of assets than if they were put at a lower figure, since by the conditions above stated the assets could go up only to a certain amount,—and all the assets needed or wanted could be had without exaggeration. What then was the motive for exaggerating? The Judge said, "to dupe and delude the people out of their money." But it had no effect nor tendency that way. That was evidently a mistake, through misapprehension of the facts. As the first count absurdly accused Dr. Lambert of exaggerating the gross premiums to $66,000, which was far within bounds, as we have seen, so as we now see the second and third counts, accusing him of exaggerating the cash assets, have no foundation in fact nor intent,—they could not be true.

How *now* does Company B (American Popular) compare with A (the 60)? It is evidently impossible by any fair means for any State to compute the Company insolvent, or unsound, according to State laws.

FACT 15.—Its "reserve" remained secure; first, in the pockets of the insured; second, *in* the insured; third, by the "conditions" of policies.

Remark—"If policies have whole-life level premiums, are not cash 'reserves' in the Company essential to security?"

Owing to the law and to ignorance many think that there is a wonderful potency, a magic power in "reserves;" a fatal fallacy, a stupendous stupidity. Witness the scores of failed companies, each of which had an abundance of "reserve" at one time, and were called sound. "Reserve" indicates that the company is

perhaps legally sound *to-day*, (it may be largely insolvent,) but is no indication for the *future*, no, not even in the least, nor is any "Examination," or Statement, or Supervision, such as the laws of any State now require ; as proof observe the *failures*.

The delusion and snare of the whole thing is conspicuous in this, that the law allows that to be sound which conforms to its requirements, even though it be commercially or actually insolvent, and sometimes calls that unsound which is actually solvent,—certainly a farce, proving the law a fiction. To illustrate: Suppose A (see example) had taken, as some of the "60" did, $300,000 in premium notes, instead of in cash, and had them as its sole assets, (not having expended as much by $50,000 as the example now shows,) the State Law, Examination, Supervision, etc., would commend it to the public as sound, though actually dollarless and hopelessly insolvent, while B, unquestionably solvent is denounced as unsound. The measure of cash "reserve" essential for security depends upon the expenses and the kind of risks in a company ; a matter never even noticed by the law ; in fact "reserve" tending to carelessness in taking risks, is a source of *insecurity* ; why then does not the law logically ask the use of "reserve," and, finding it no practical necessity, go to work and regulate those things on which the security primarily depends ? then—as not one per cent. of the assured in any company continues to the age when it is pretended that the "reserve" will be needed,—if the company is well worked, the surplus vitality and longevity, the *viability*, of its insured, will necessarily furnish surplus funds sufficient to carry the business ; if the work is not well done, no "reserve" ever yet known will suffice ; that is, companies usually fail before "reserve" is applicable ; but if so well conducted as to live till it is applicable, their risks are so good that "reserve" will not be needed. If the law intends perfect security its true way is, to get rid of all excuse for "reserve," by requiring Companies to insure for as many years as desirable, but always by the "pay as you go" plan, viz., only pay yearly the cost of each risk classed with others like it. This is not only the most secure, but the most economical, equitable, and in every way the best plan.

See plan of Prov. Savings Life Assoc'n. Also Prospectus of Income Ins. Co.

FACT 16.—The Company had a much larger surplus of assets over "reserve" than it needed or wanted.

Remark.—A clear view of this truth and its bearing will dispel from the most prejudiced mind the idea that Dr. Lambert could be guilty of exaggerating cash assets as he was accused of doing. He could have had no motive that way, but might have had in the very opposite direction. In fact J. F. Trow testified that he had been asked several times to settle up his matters, and get them off the books. Now that would reduce the apparent assets; they were too large for taxation, and for the ratio tables. The $46,000 stock check assets, about which so much was said, were a detriment every way; they had been reduced, and would have been cleared off before, as they were after the "statement," if they could have been legitimately. Such checks had always been counted in the cash account since before Dr. Lambert was President,—there was no other place for them. The surplus was so large that it is absurd to suppose that it was *made* so, when half of it would have been better. There was no guile, no intent, no end to be served, therefore the whole matter must have been honorable and honest.

"Why were not all these things brought out on the trial?"

They were not allowed to be.

FACT 17.—If Mr. Barnes' "offers" had been allowed he would quickly have shown that there was no case, no false statements; that there were no motives inducing them.

Remark.—For example, when McCall having stated that there were not $66,000 "gross premiums due," was cross-examined, Mr. Barnes quickly made him acknowledge that he knew nothing about the matter; that he had not examined the policies of the Company, did not know anything about the "gross premiums due," that there might be many more thousands of them, and upon reflection he thought probably there were. Thus the first count of indictment was set aside, and if Mr. Barnes had been allowed to proceed, he would have proved so clearly that the Company was solvent that no jury would have believed that Dr. Lambert was guilty, but as the first and third count had already gone by the board, the prosecution did not dare to let Mr. Barnes proceed.

"How then were the State officials able to make the Company appear to be 'deficient' ?"

That is the precise point which should arrest the attention of every thoughtful mind which reveres justice and loves fair play.

FACT 18.—The Company never was legally examined, nor was the pretended examination made by persons qualified mentally or morally.

Remark.—A terrible arraignment this of public officials, if true, if not, it should boomerang the accuser severely. As it regards the last point, the officials concerned might be left to the severe reprehension of Hon. Elizur Wright's caustic remarks, and the truth testified to also by others, in a document herewith, which see. These parties had no personal interest to serve, and were only asked for the truth in a matter about which there can be no dispute; the truth was a weapon quite powerful enough compared with McCall's testimony herewith, which see, to sustain the allegation above made.

But again Dept. McCall on the stand said that he had several Term-policies, but would not have a whole-life "reserve" policy. Yet nothing condemning one and approving the other, no warning, no instruction appears in the State Report, no protective law against "reserves" is therein, or otherwise, suggested to the Legislature. To know that "reserves" are instrumental in swindling many millions dollars yearly out of the insured; that Term policies avoid that opportunity, and are the cheapest, equitable, secure, and every way best; to use this knowledge personally, withholding it from the public, in the interest of those who are fleecing the insured, shows a total moral unfitness in an official,—a moral incompetence to examine or report upon a company. Would any one trust the conscience, the honor, or integrity of a man who making no effort, as his official duty especially requires, to stay such an immense robbery, but winking at it, falls upon a small, every way honorable Company, involving, all told, little more than a quarter of a million, not one-fourth the stealing of some companies each year, and with vehement ostentation condemns it as the greatest of offenders, while vigorously praising one in which the sum of insurance

villainies exists? Will this be thought a conscientious desire to perform official duty, or a base hypocricy, calling attention away from a wickedness that pays to be concealed? May not by such an official, an honorable company, from which nothing can be made, be condemned with the intent of covering the commendation of a rascally company from which much can be made?

But what of the fitness of an Examiner, or the maker of a Report, who said he "knew no more of life insurance than a babe"? can he have or express more wisdom about it than the aforesaid?: "but wisdom proceeds not from the mouths of babes and sucklings." If rich at the expense of wives and children by selling ale and brewers' grains, is he fit to take a deep interest in widows and orphans? If proud to be "the best draw-poker player in the State," winning or losing $1,000 a night, is he fitted to burn the midnight oil over prosy insurance equities? If politics be his weakness, do they especially fit him to urge insurance economies,—particularly about election time? Do either or all fit him to appreciate scientific insurance officials, principles and methods, and without prejudice to examine and Report a Company, a special point of which was to make low rates to those who do not drink ale, and very high rates where gambling and other exciting influences exist, and the only one noted for not paying nor donating money illegitimately?

As to legality of examination; from first to last there was no law applied, but the officials arbitrarily took it into their own hands, making, adjudicating, and executing what they called law, but which had neither the countenance of the statute nor of science, nor of morals. The Company was condemned first, by discarding some and cutting down other assets, without a shadow of legal authority, as conceded by Dept. McCall to the cross-questioning of Hon. Mr. Barnes, and second, by computing reserves against the old policies equally without authority, and by not conceding to the Company the right given by equity not only, but by the *conditions of its policies*, to charge policyholders a still greater amount, and thus balance one computation by another with a surplus.

"Why was not the foul result of this pretended examination resisted,—at least protested against?"

Most shameful and disgraceful is the answer.

FACT 19.—No opportunity was allowed the Company to know what the Report would be, to make explanation, to discuss illegal acts or conclusions, nor to make good any pretended deficiency. It was a star chamber examination, report, and publication.

Remark.—Dept. McCall testified that the President asked him, when leaving the office at the close of the examination "if any deficiency was found, to let him know, as they wanted to make it good." This was not true, since the President had no idea how it was possible, but he asked "if any thing was not understood by Mr. Smyth, to be permitted to explain it." He had been to Albany to explain the modes of business, the Supt. was too busy, would see him in New York all the time needed; he came into New York office in "great hurry," staid not over 15 minutes, promised to be in again—never was, hence the request. Whether McCall's testimony is true or false, it equally shows the intent in regard to not allowing a company to know about "deficiency."

Another fact is of great moment: a Director hearing an ill omen from Albany, without consulting with the Company or officials, took a large amount of solid securities in his bag and went to Albany. The Superintendent told him that the Attorney General said that Superintendents had made themselves liable to indictment by allowing companies to make up deficency; that he did not know what the report was to be, it was not done, but if he did, he could not tell him, as it was against the law, but seeing he was there, if he would agree not to speak of what he heard, especially to any of the Company, the Deputy should be called in, and read parts of what was ready, and answer some questions, so that he would get the information he wanted but he must then go out without asking any questions. Now it appears that the Report was signed and sent to the State Paper that night, before all the facts to close it were in, since they were sent to Albany by that very night's mail. The

officials knew nothing of the impending calamity until they read it in the morning papers. Evidently this was done to prevent the Company from having an opportunity to save itself.

What then shall be said of a Department that shall prevent any recuperation, or of any law, if there is one, which prevents making good a deficiency, prevents the company from knowing first of all that a deficiency is supposed to exist?

Effort after effort has been made since to recuperate the Company but every effort has been frustrated; even a new Company was set on foot to save policyholders, but its charter was delayed by the Department so long that that intent was frustrated.

"But why was not some law provided long ago to avert the possibility of the effects of "ignorance or falsehood?"

That was attempted: in the administration of Gov. Hoffman the Legislature passed a Bill *nem con.*, and then it was laid before the Governor, who sent the bill (the Legislature had adjourned) to the Secretary unsigned. When his attention was called to it he was surprised at the manner in which he was deceived, and promptly said that he would correct the error the next winter by commending its passage and signing it. But he was not elected. The Bill was before the Legislature, and passed the Assembly, but could not be got out of the hands of the Senate Committee of which Mr. Tobey was chairman. The experiment the next year was nearly the same. In the House Committee the then acting Supt. was asked his opinion of its propriety, and like Supt. Chapman, he expressed himself most strongly in its favor, but the Senate Committee held the bill. Last year it was determined that no excuse in regard to time should be made for not reporting it, and it was introduced early. Mr. Tobey then said that the Department did not favor it. He was told that there must be a mistake, since the Acting Superintendent had approved it. He said he had not spoken to him, but to the Deputy, who disapproved of it. This let another "cat out the bag," that is, who the Department was in the estimation of Mr. Tobey.

The methods of the Company have therefore been approved by a Legislature, a Governor, and by Superintendents of this

State, as well as by officials of other States. Some officials have always taken the graded ages as the basis of computing the "reserve," or "value of policies," in this Company.

It was only the opposition of the other Companies, who wished to swindle immense amounts of "reserve" out of the insured, which prevented the legal approbation of correct insurance. This opposition has appeared upon all occasions, and in all directions, consuming a vast expense, scores, even hundreds of thousands on the press and otherwise, and was the inspiration of the present incubus on the Company, and of the incarceration of its president.

FACT 20.—In 1876, its Decennium being fulfilled, the Company began to redeem its ten year old promises by changing and enlarging its early made policies, if the insured were yet sound.

Remark. When the Company started it did not grade its risks as low as its judgment suggested, but promised that after ten prosperous years it would give new policies enlarged and with every advantage its experience would permit. This pledge, in 1876, it proceeded to redeem. It offered the choice of having a precise copy of old policy except assurance increased, or the latest edition which had many points favorable, and not one unfavorable to the honest insured.

Ex. If an application was revised and found right, the policy should be endorsed incontestible, etc.; the old policy need not be sent until the new one was received and compared, and then either could be returned. The kind of policy and its premium was the same in each case.

It does not seem that this honorable action of the Company could be made to appear to be a fraud deliberately perpetrated to swindle those very policyholders which it was designed to profit and to please; but when the Agents of other companies saw presented the strong *Facts* stated under 13, they read the "hand-writing on the wall," and *Fact* 20, following, was "the straw which broke the camel's back." A small meeting was held in one city, and a delegation sent to the Home Offices, to represent the exigencies of the case and to consult.

A plan was concocted. The policy which was increased so gratifyingly to policyholders must be the point of attack; it must be made a cause of dissatisfaction against the Company. The idea must be disseminated that the policyholders were cheated out of their "reserves;" true, they had paid no "reserves," had no interest in any "reserve;" no matter, they understood nothing about "reserves," and therein was a means of making them believe themselves defrauded. Of course the hand of the agents, or of the Companies must not be apparent; unsuspected instrumentalities must be used. They were at hand. The agents told the policyholders to write to the Department and find out how they had been swindled on "reserves." The device worked well, making great dissatisfaction with the Company, for when insinuated by letters sent from the Department to policyholders, of course they began to think and to say that the change of policies had been effected by deception. The success had by midwinter developed a determination to make a bold stroke, put up enough money, and by an expansion of the same idea break up the Company entirely. Another meeting was called, $400,000 subscribed to destroy this and three other Companies. (This fact is given upon the statement of a person who was present, and gave names of subscribers and amounts.) A ring was formed embracing various intents and interests, some political, some pecuniary, some, the basis, insurance, all being served by the breaking up of certain Companies, and by their receiverships. Hence, doubtless, why the law was construed as it had never been before, not to permit a company to rescue itself or its policyholders. This Company was of course the first to suffer, since the way to do it was at hand, being already devised.

When, therefore, the Company was examined its assets were not only most unjustly and illegally cut down, but the inspired complaints of policyholders were made a pretext for setting aside the new, and computing "reserve" upon the old, policies, after the Company had computed and sent in its statement of its assets on the basis of the new policies, thus dropping more than $200,000 of "*gross premiums due*," etc., assets to

which the Company was entitled if the "old policies" were taken as a basis of "reserve." It was next necessary to keep up the charge about the change of policies to sustain the idea that the Company was not solvent, and had been properly attacked, hence a referee upon those policies was appointed, and a Report made, and notices in the papers, "Insurance Fraud," etc., and all the paraphernalia carried out of which the public has seen so much.

It is now quite evident that the whole matter in regard to this Company has turned upon the question of "reserve," and that the "ignorance or falsehood" in regard to it has been the bane of its afflictions. The public at large are not expected to understand it; even lawyers, courts and legislators may be pardoned for "ignorance" in regard to it, but for State Insurance officials to be in "ignorance" is more criminal than to be guilty of "falsehood" about it; and surely it is doubly criminal, either through "ignoranee or falsehood," and especially through both, as was doubtless the case in this instance, to condemn a solvent Company and accuse its honorable officials.

The fact is, that nothing was ever done more fair or more honorable than the treatment of its policyholders by this Company, particularly in the matter of this change of policies; to every policyholder it was a gain, and to the Company a loss, except as increased satisfaction to the policyholders, and an increased acquaintance with them was a gain, which was esteemed quite sufficient.